

105TH CONGRESS
1ST SESSION

S. 121

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. MOYNIHAN (for himself, Mr. CHAFEE, Mr. KENNEDY, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Higher Education
5 Bond Parity Act”.

6 **SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO**
7 **GOVERNMENTAL BONDS.**

8 (a) IN GENERAL.—Section 150(a) of the Internal
9 Revenue Code of 1986 (relating to definitions and special

1 rules) is amended by striking paragraphs (2) and (4), by
 2 redesignating paragraphs (5) and (6) as paragraphs (4)
 3 and (5), respectively, and by inserting after paragraph (1)
 4 the following:

5 “(2) EXEMPT PERSON.—

6 “(A) IN GENERAL.—The term ‘exempt per-
 7 son’ means—

8 “(i) a governmental unit, or

9 “(ii) a 501(c)(3) organization, but
 10 only with respect to its activities which do
 11 not constitute unrelated trades or busi-
 12 nesses as determined by applying section
 13 513(a).

14 “(B) GOVERNMENTAL UNIT NOT TO IN-
 15 CLUDE FEDERAL GOVERNMENT.—The term
 16 ‘governmental unit’ does not include the United
 17 States or any agency or instrumentality thereof.

18 “(C) 501(c)(3) ORGANIZATION.—The term
 19 ‘501(c)(3) organization’ means any organization
 20 described in section 501(c)(3) and exempt from
 21 tax under section 501(a).”.

22 (b) REPEAL OF QUALIFIED 501(c)(3) BOND DES-
 23 IGNATION.—Section 145 of the Internal Revenue Code of
 24 1986 (relating to qualified 501(c)(3) bonds) is repealed.

25 (c) CONFORMING AMENDMENTS.—

1 (1) Section 141(b)(3) of the Internal Revenue
2 Code of 1986 is amended—

3 (A) in subparagraphs (A)(ii)(I) and
4 (B)(ii), by striking “government use” and in-
5 serting “exempt person use”;

6 (B) in subparagraph (B), by striking “a
7 government use” and inserting “an exempt per-
8 son use”;

9 (C) in subparagraphs (A)(ii)(II) and (B),
10 by striking “related business use” and inserting
11 “related private business use”;

12 (D) in the heading of subparagraph (B),
13 by striking “RELATED BUSINESS USE” and in-
14 serting “RELATED PRIVATE BUSINESS USE”;
15 and

16 (E) in the heading thereof, by striking
17 “GOVERNMENT USE” and inserting “EXEMPT
18 PERSON USE”.

19 (2) Section 141(b)(6)(A) of such Code is
20 amended by striking “a governmental unit” and in-
21 serting “an exempt person”.

22 (3) Section 141(b)(7) of such Code is amend-
23 ed—

24 (A) by striking “government use” and in-
25 serting “exempt person use”; and

1 (B) in the heading thereof, by striking
 2 “GOVERNMENT USE” and inserting “EXEMPT
 3 PERSON USE”.

4 (4) Section 141(b) of such Code is amended by
 5 striking paragraph (9).

6 (5) Section 141(c)(1) of such Code is amended
 7 by striking “governmental units” and inserting “ex-
 8 empt persons”.

9 (6) Section 141 of such Code is amended by re-
 10 designating subsection (e) as subsection (f) and by
 11 inserting after subsection (d) the following:

12 “(e) CERTAIN ISSUES USED TO PROVIDE RESIDEN-
 13 TIAL RENTAL HOUSING FOR FAMILY UNITS.—

14 “(1) IN GENERAL.—Except as provided in para-
 15 graph (2), for purposes of this title, the term ‘pri-
 16 vate activity bond’ includes any bond issued as part
 17 of an issue if any portion of the net proceeds of the
 18 issue are to be used (directly or indirectly) by an ex-
 19 empt person described in section 150(a)(2)(A)(ii) to
 20 provide residential rental property for family units.
 21 This paragraph shall not apply if the bond would
 22 not be a private activity bond if the section
 23 501(c)(3) organization were not an exempt person.

24 “(2) EXCEPTION FOR BONDS USED TO PROVIDE
 25 QUALIFIED RESIDENTIAL RENTAL PROJECTS.—

1 Paragraph (1) shall not apply to any bond issued as
 2 part of an issue if the portion of such issue which
 3 is to be used as described in paragraph (1) is to be
 4 used to provide—

5 “(A) a residential rental property for fam-
 6 ily units if the first use of such property is pur-
 7 suant to such issue,

8 “(B) qualified residential rental projects
 9 (as defined in section 142(d)), or

10 “(C) property which is to be substantially
 11 rehabilitated in a rehabilitation beginning with-
 12 in the 2-year period ending 1 year after the
 13 date of the acquisition of such property.

14 “(3) SUBSTANTIAL REHABILITATION.—

15 “(A) IN GENERAL.—Except as provided in
 16 subparagraph (B), rules similar to the rules of
 17 section 47(c)(1)(C) shall apply in determining
 18 for purposes of paragraph (2)(C) whether prop-
 19 erty is substantially rehabilitated.

20 “(B) EXCEPTION.—For purposes of sub-
 21 paragraph (A), clause (ii) of section 47(c)(1)(C)
 22 shall not apply, but the Secretary may extend
 23 the 24-month period in section 47(c)(1)(C)(i)
 24 where appropriate due to circumstances not
 25 within the control of the owner.

“(4) CERTAIN PROPERTY TREATED AS NEW
PROPERTY.—Solely for purposes of determining
under paragraph (2)(A) whether the 1st use of prop-
erty is pursuant to tax-exempt financing—

“(A) IN GENERAL.—If—

“(i) the 1st use of property is pursu-
ant to taxable financing,

“(ii) there was a reasonable expecta-
tion (at the time such taxable financing
was provided) that such financing would be
replaced by tax-exempt financing, and

“(iii) the taxable financing is in fact
so replaced within a reasonable period
after the taxable financing was provided,
then the 1st use of such property shall be treat-
ed as being pursuant to the tax-exempt financ-
ing.

“(B) SPECIAL RULE WHERE NO OPERAT-
ING STATE OR LOCAL PROGRAM FOR TAX-EX-
EMPT FINANCING.—If, at the time of the 1st
use of property, there was no operating State or
local program for tax-exempt financing of the
property, the 1st use of the property shall be
treated as pursuant to the 1st tax-exempt fi-
nancing of the property.

1 “(C) DEFINITIONS.—For purposes of this
2 paragraph—

3 “(i) TAX-EXEMPT FINANCING.—The
4 term ‘tax-exempt financing’ means financ-
5 ing provided by tax-exempt bonds.

6 “(ii) TAXABLE FINANCING.—The
7 term ‘taxable financing’ means financing
8 which is not tax-exempt financing.”.

9 (7) Section 141(f) of such Code, as redesign-
10 nated by paragraph (6), is amended—

11 (A) at the end of subparagraph (E), by
12 adding “or”;

13 (B) at the end of subparagraph (F), by
14 striking “, or” and inserting a period; and

15 (C) by striking subparagraph (G).

16 (8) The last sentence of section 144(b)(1) of
17 such Code is amended by striking “(determined”
18 and all that follows to the period.

19 (9) Section 144(c)(2)(C)(ii) of such Code is
20 amended by striking “a governmental unit” and in-
21 serting “an exempt person”.

22 (10) Section 146(g) of such Code is amended—

23 (A) by striking paragraph (2);

24 (B) by redesignating paragraphs (3) and
25 (4) as paragraphs (2) and (3), respectively; and

1 (C) by striking “Paragraph (4)” and in-
 2 serting “Paragraph (3)”.

3 (11) The heading of section 146(k)(3) of such
 4 Code is amended by striking “GOVERNMENTAL” and
 5 inserting “EXEMPT PERSON”.

6 (12) The heading of section 146(m) of such
 7 Code is amended by striking “GOVERNMENT” and
 8 inserting “EXEMPT PERSON”.

9 (13) Section 147(b) of such Code is amended
 10 by striking paragraph (4) and by redesignating
 11 paragraph (5) as paragraph (4).

12 (14) Section 147(h) of such Code is amended to
 13 read as follows:

14 “(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE
 15 REVENUE BONDS AND QUALIFIED STUDENT LOAN
 16 BONDS.—Subsections (a), (b), (c), and (d) shall not apply
 17 to any qualified mortgage bond, qualified veterans’ mort-
 18 gage bond, or qualified student loan bond.”.

19 (15) Section 148(d)(3)(F) of such Code is
 20 amended—

21 (A) by striking “or which is a qualified
 22 501(c)(3) bond”; and

23 (B) in the heading thereof, by striking
 24 “GOVERNMENTAL USE BONDS AND QUALIFIED
 25 501(c)(3)” and inserting “EXEMPT PERSON”.

1 (16) Section 148(f)(4)(B)(ii)(II) of such Code
 2 is amended by striking “(other than a qualified
 3 501(c)(3) bond)”.

4 (17) Section 148(f)(4)(C)(iv) of such Code is
 5 amended—

6 (A) by striking “a governmental unit or a
 7 501(c)(3) organization” both places it appears
 8 and inserting “an exempt person”;

9 (B) by striking “qualified 501(c)(3)
 10 bonds,”; and

11 (C) by striking the comma after “private
 12 activity bonds” the first place it appears.

13 (18) Section 148(f)(7)(A) of such Code is
 14 amended by striking “(other than a qualified
 15 501(c)(3) bond)”.

16 (19) Section 149(d)(2) of such Code is amend-
 17 ed—

18 (A) by striking “(other than a qualified
 19 501(c)(3) bond)”; and

20 (B) in the heading thereof, by striking
 21 “CERTAIN PRIVATE” and inserting “PRIVATE”.

22 (20) Section 149(e)(2) of such Code is amend-
 23 ed—

24 (A) in the second sentence, by striking
 25 “which is not a private activity bond” and in-

1 S6201 serting “which is a bond issued for an exempt
 2 person described in section 150(a)(2)(A)(i)”;
 3 and

4 (B) by adding at the end the following:
 5 “Subparagraph (D) shall not apply to any bond
 6 which is not a private activity bond but which
 7 would be such a bond if the 501(c)(3) organiza-
 8 tion using the proceeds thereof were not an ex-
 9 empt person.”.

10 (21) The heading of section 150(b) of such
 11 Code is amended by striking “TAX-EXEMPT PRI-
 12 VATE ACTIVITY BONDS” and inserting “CERTAIN
 13 TAX-EXEMPT BONDS”.

14 (22) Section 150(b)(3) of such Code is amend-
 15 ed—

16 (A) in subparagraph (A), by inserting
 17 “owned by a 501(c)(3) organization” after “any
 18 facility”;

19 (B) in subparagraph (A), by striking “any
 20 private activity bond which, when issued, pur-
 21 ported to be a tax-exempt qualified 501(c)(3)
 22 bond” and inserting “any bond which, when is-
 23 sued, purported to be a tax-exempt bond, and
 24 which would be a private activity bond if the

1 501(c)(3) organization using the proceeds
2 thereof were not an exempt person”; and

3 (C) by striking the heading thereof and in-
4 serting “BONDS FOR EXEMPT PERSONS OTHER
5 THAN GOVERNMENTAL UNITS.—”.

6 (23) Section 150(b)(5) of such Code is amend-
7 ed—

8 (A) in subparagraph (A), by striking “pri-
9 vate activity”;

10 (B) in subparagraph (A), by inserting
11 “and which would be a private activity bond if
12 the 501(c)(3) organization using the proceeds
13 thereof were not an exempt person” after “tax-
14 exempt bond”;

15 (C) by striking subparagraph (B) and in-
16 serting the following:

17 “(B) such facility is required to be owned
18 by an exempt person, and”; and

19 (D) in the heading thereof, by striking
20 “GOVERNMENTAL UNITS OR 501(c)(3) ORGANIZA-
21 TIONS” and inserting “EXEMPT PERSONS”.

22 (24) Section 150 of such Code is amended by
23 adding at the end the following:

24 “(f) CERTAIN RULES TO APPLY TO BONDS FOR EX-
25 EMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

1 “(1) IN GENERAL.—Nothing in section 103(a)
 2 or any other provision of law shall be construed to
 3 provide an exemption from Federal income tax for
 4 interest on any bond which would be a private activ-
 5 ity bond if the 501(c)(3) organization using the pro-
 6 ceeds thereof were not an exempt person unless such
 7 bond satisfies the requirements of subsections (b)
 8 and (f) of section 147.

9 “(2) SPECIAL RULE FOR POOLED FINANCING
 10 OF 501(c)(3) ORGANIZATION.—

11 “(A) IN GENERAL.—At the election of the
 12 issuer, a bond described in paragraph (1) shall
 13 be treated as meeting the requirements of sec-
 14 tion 147(b) if such bond meets the require-
 15 ments of subparagraph (B).

16 “(B) REQUIREMENTS.—A bond meets the
 17 requirements of this subparagraph if—

18 “(i) 95 percent or more of the net
 19 proceeds of the issue of which such bond is
 20 a part are to be used to make or finance
 21 loans to 2 or more 501(c)(3) organizations
 22 or governmental units for acquisition of
 23 property to be used by such organizations,

24 “(ii) each loan described in clause (i)
 25 satisfies the requirements of section 147(b)

1 (determined by treating each loan as a sep-
 2 arate issue),

3 “(iii) before such bond is issued, a de-
 4 mand survey was conducted which shows a
 5 demand for financing greater than an
 6 amount equal to 120 percent of the
 7 lendable proceeds of such issue, and

8 “(iv) 95 percent or more of the net
 9 proceeds of such issue are to be loaned to
 10 501(c)(3) organizations or governmental
 11 units within 1 year of issuance and, to the
 12 extent there are any unspent proceeds
 13 after such 1-year period, bonds issued as
 14 part of such issue are to be redeemed as
 15 soon as possible thereafter (and in no
 16 event later than 18 months after issuance).

17 A bond shall not meet the requirements of this
 18 subparagraph if the maturity date of any bond
 19 issued as part of such issue is more than 30
 20 years after the date on which the bond was is-
 21 sued (or, in the case of a refunding or series of
 22 refundings, the date on which the original bond
 23 was issued).”.

24 (25) Section 1302 of the Tax Reform Act of
 25 1986 is repealed.

1 (26) Section 57(a)(5)(C) of such Code is
 2 amended by striking clause (ii) and by redesignating
 3 clauses (iii) and (iv) as clauses (ii) and (iii), respec-
 4 tively.

5 (27) Section 103(b)(3) of such Code is amend-
 6 ed by inserting “and section 150(f)” after “section
 7 149”.

8 (28) Section 265(b)(3) of such Code is amend-
 9 ed—

10 (A) in subparagraph (B), by striking
 11 clause (ii) and inserting the following:

12 “(ii) CERTAIN BONDS NOT TREATED
 13 AS PRIVATE ACTIVITY BONDS.—For pur-
 14 poses of clause (i)(II), there shall not be
 15 treated as a private activity bond any obli-
 16 gation issued to refund (or which is part of
 17 a series of obligations issued to refund) an
 18 obligation issued before August 8, 1986,
 19 which was not an industrial development
 20 bond (as defined in section 103(b)(2) as in
 21 effect on the day before the date of the en-
 22 actment of the Tax Reform Act of 1986)
 23 or a private loan bond (as defined in sec-
 24 tion 103(o)(2)(A), as so in effect, but with-
 25 out regard to any exemption from such

1 definition other than section
2 103(o)(2)(A)).”; and
3 (B) in subparagraph (C)(ii)(I), by striking
4 “(other than a qualified 501(c)(3) bond, as de-
5 fined in section 145)”.

6 (d) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply to bonds (including refunding bonds) is-
10 sued with respect to capital expenditures made on or
11 after the date of the enactment of this Act.

12 (2) EXCEPTION.—The amendments made by
13 this section shall not apply to bonds issued before
14 January 1, 1997, for purposes of applying section
15 148(f)(4)(D) of the Internal Revenue Code of 1986.

○